



Senate

General Assembly

File No. 286

January Session, 2021

Senate Bill No. 907

Senate, April 6, 2021

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING MINOR AND TECHNICAL CHANGES TO THE WORKERS' COMPENSATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2021*) (a) (1) Wherever the words
2 "workers' compensation commissioner", "compensation commissioner"
3 or "commissioner" are used to denote a workers' compensation
4 commissioner in the following sections of the general statutes, the
5 words "administrative law judge" shall be substituted in lieu thereof: 4-
6 186, 5-170, 5-192h, 17b-341, 19a-641, 28-14, 29-4a, 31-275, 31-276, 31-277,
7 31-278, 31-279, 31-280, 31-280a, as amended by this act, 31-280b, 31-282,
8 31-283, 31-283d, 31-283e, 31-283f, as amended by this act, 31-284c, 31-
9 286, 31-286a, 31-286b, 31-288, 31-289a, 31-290a, 31-293, 31-294b, 31-294c,
10 31-294d, 31-294e, 31-294f, 31-296, 31-296a, 31-297, 31-297a, 31-298, as
11 amended by this act, 31-299, 31-299a, 31-299b, 31-300, 31-301, 31-301c,
12 31-301d, 31-302, 31-306, 31-306b, 31-307a, 31-308, 31-308a, 31-310, 31-312,
13 31-313, 31-315, 31-316, 31-318, 31-321, 31-323, 31-326, 31-327, 31-329, 31-
14 341, 31-342, 31-343, 31-349, as amended by this act, 31-349b, 31-349c, 31-

15 353, 31-355, 38a-470, 38a-500, 38a-527, 46b-231, 51-49, 51-49a, 51-49b, 51-
16 49c, 51-49d, 51-49g, 51-49h, 51-49i, 51-49j, 51-50, 51-50a, 51-50b, 51-51,
17 51-51h, 51-51i, 51-51k, 51-51l, 51-51m, 51-51n, 51-51o, 51-51p, 51-51q, 51-
18 51r, 51-51s, 51-63 and 52-149a.

19 (2) Wherever the words "workers' compensation commissioner",
20 "compensation commissioner" or "commissioner" are used to denote a
21 workers' compensation commissioner in any public act of the 2021
22 session, the words "administrative law judge" shall be substituted in lieu
23 thereof.

24 (b) The Legislative Commissioners' Office shall, in codifying said
25 sections of the general statutes pursuant to subdivision (1) of subsection
26 (a) of this section or any public act of the 2021 session pursuant to
27 subdivision (2) of subsection (a) of this section, make such technical,
28 grammatical and punctuation changes as are necessary to carry out the
29 purposes of this section.

30 Sec. 2. Subsection (c) of section 31-280a of the general statutes is
31 repealed and the following is substituted in lieu thereof (*Effective October*
32 *1, 2021*):

33 (c) The advisory board shall meet at least [twice] once in each
34 calendar quarter and at such other times as the chairman or the
35 chairman of the Workers' Compensation Commission deem necessary.
36 All actions of the advisory board shall require the affirmative vote of six
37 members of the advisory board. The advisory board may bring any
38 matter related to the operation of the workers' compensation system to
39 the attention of the chairman of the Workers' Compensation
40 Commission. The advisory board may adopt any rules of procedure that
41 the board deems necessary to carry out its duties under this chapter.

42 Sec. 3. Subsection (a) of section 31-283f of the general statutes is
43 repealed and the following is substituted in lieu thereof (*Effective October*
44 *1, 2021*):

45 (a) A Statistical Division shall be established within the Workers'

46 Compensation Commission. The division shall compile and maintain
47 statistics concerning occupational injuries and diseases, voluntary
48 agreements, status of claims and commissioners' dockets. [The division
49 shall be administered by a full-time salaried director who shall be
50 appointed by the chairman of the Workers' Compensation Commission
51 under the provisions of chapter 67. The director shall report to the
52 chairman.]

53 Sec. 4. Section 31-298 of the general statutes is repealed and the
54 following is substituted in lieu thereof (*Effective October 1, 2021*):

55 Both parties may appear at any hearing, either in person or by
56 attorney or other accredited representative, and no formal pleadings
57 shall be required, beyond any informal notices that the commission
58 approves. In all cases and hearings under the provisions of this chapter,
59 the commissioner shall proceed, so far as possible, in accordance with
60 the rules of equity. He shall not be bound by the ordinary common law
61 or statutory rules of evidence or procedure, but shall make inquiry,
62 through oral testimony, deposition testimony or written and printed
63 records, in a manner that is best calculated to ascertain the substantial
64 rights of the parties and carry out the provisions and intent of this
65 chapter. No fees shall be charged to either party by the commissioner in
66 connection with any hearing or other procedure, but the commissioner
67 shall furnish at cost (1) certified copies of any testimony, award or other
68 matter which may be of record in his office, and (2) duplicates of audio
69 [cassette] recordings of any formal hearings. Witnesses subpoenaed by
70 the commissioner shall be allowed the fees and traveling expenses that
71 are allowed in civil actions, to be paid by the party in whose interest the
72 witnesses are subpoenaed. When liability or extent of disability is
73 contested by formal hearing before the commissioner, the claimant shall
74 be entitled, if he prevails on final judgment, to payment for oral
75 testimony or deposition testimony rendered on his behalf by a
76 competent physician, surgeon or other medical provider, including the
77 stenographic and videotape recording costs thereof, in connection with
78 the claim, the commissioner to determine the reasonableness of such
79 charges.

80 Sec. 5. Section 31-349 of the general statutes is repealed and the
81 following is substituted in lieu thereof (*Effective October 1, 2021*):

82 [(a)] The fact that an employee has suffered a previous disability,
83 shall not preclude him from compensation for a second injury, nor
84 preclude compensation for death resulting from the second injury. If an
85 employee having a previous disability incurs a second disability from a
86 second injury resulting in a permanent disability caused by both the
87 previous disability and the second injury which is materially and
88 substantially greater than the disability that would have resulted from
89 the second injury alone, he shall receive compensation for (1) the entire
90 amount of disability, including total disability, less any compensation
91 payable or paid with respect to the previous disability, and (2) necessary
92 medical care, as provided in this chapter, notwithstanding the fact that
93 part of the disability was due to a previous disability. For purposes of
94 this [subsection] section, "compensation payable or paid with respect to
95 the previous disability" includes compensation payable or paid
96 pursuant to the provisions of this chapter, as well as any other
97 compensation payable or paid in connection with the previous
98 disability, regardless of the source of such compensation.

99 [(b)] As a condition precedent to the liability of the Second Injury
100 Fund, the employer or its insurer shall: (1) Notify the custodian of the
101 fund by certified mail no later than three calendar years after the date of
102 injury or no later than ninety days after completion of payments for the
103 first one hundred and four weeks of disability, whichever is earlier, of
104 its intent to transfer liability for the claim to the Second Injury Fund; (2)
105 include with the notification (A) copies of all medical reports, (B) an
106 accounting of all benefits paid, (C) copies of all findings, awards and
107 approved voluntary agreements, (D) the employer's or insurer's
108 estimate of the reserve amount to ultimate value for the claim, (E) a two-
109 thousand-dollar notification fee payable to the custodian to cover the
110 fund's costs in evaluating the claim proposed to be transferred and (F)
111 such other material as the custodian may require. The employer by
112 whom the employee is employed at the time of the second injury, or its
113 insurer, shall in the first instance pay all awards of compensation and

114 all medical expenses provided by this chapter for the first one hundred
115 four weeks of disability. Failure on the part of the employer or an insurer
116 to comply does not relieve the employer or insurer of its obligation to
117 continue furnishing compensation under the provisions of this chapter.
118 The custodian of the fund shall, by certified mail, notify a self-insured
119 employer or an insurer, as applicable, of the rejection of the claim within
120 ninety days after receiving the completed notification. Any claim which
121 is not rejected pursuant to this section shall be deemed accepted, unless
122 the custodian notifies the self-insured employer or the insurer within
123 the ninety-day period that up to an additional ninety days is necessary
124 to determine if the claim for transfer will be accepted. If the claim is
125 accepted for transfer, the custodian shall file with the workers'
126 compensation commissioner for the district in which the claim was filed,
127 a form indicating that the claim has been transferred to the Second
128 Injury Fund and the date that such claim was transferred and shall
129 refund fifteen hundred dollars of the notification fee to the self-insured
130 employer or the insurer, as applicable. A copy of the form shall be
131 mailed to the self-insured employer or the insurer and to the claimant.
132 No further action by the commissioner shall be required to transfer said
133 claim. If the custodian rejects the claim of the employer or its insurer,
134 the question shall be submitted by certified mail within thirty days of
135 the receipt of the notice of rejection by the employer or its insurer to the
136 commissioner having jurisdiction, and the employer or insurer shall
137 continue furnishing compensation until the outcome is finally decided.
138 Claims not submitted to the commissioner within said time period shall
139 be deemed withdrawn with prejudice. If the employer or insurer
140 prevails, or if the custodian accepts the claim all payments made beyond
141 the one-hundred-four-week period shall be reimbursed to the employer
142 or insurer by the Second Injury Fund.

143 (c) If the second injury of an employee results in the death of the
144 employee, and it is determined that the death would not have occurred
145 except for a preexisting permanent physical impairment, the employer
146 or its insurer shall, in the first instance, pay the funeral expense
147 described in this chapter, and shall pay death benefits as may be due for
148 the first one hundred four weeks. The employer or its insurer may

149 thereafter transfer liability for the death benefits to the Second Injury
150 Fund in accordance with the procedures set forth in subsection (b) of
151 this section.

152 (d) Notwithstanding the provisions of this section, no injury which
153 occurs on or after July 1, 1995, shall serve as a basis for transfer of a claim
154 to the Second Injury Fund under this section. All such claims shall
155 remain the responsibility of the employer or its insurer under the
156 provisions of this section.

157 (e) All claims for transfer of injuries for which the fund has been
158 notified prior to July 1, 1995, shall be deemed withdrawn with prejudice,
159 unless the employer or its insurer notifies the custodian of the fund by
160 certified mail prior to October 1, 1995, of its intention to pursue transfer
161 pursuant to the provisions of this section. No notification fee shall be
162 required for notices submitted pursuant to this subsection. This
163 subsection shall not apply to notices submitted prior to July 1, 1995, in
164 response to the custodian's request, issued on March 15, 1995, for
165 voluntary resubmission of notices.

166 (f) No claim, where the custodian of the Second Injury Fund was
167 served with a valid notice of intent to transfer under this section, shall
168 be eligible for transfer to the Second Injury Fund unless all requirements
169 for transfer, including payment of the one hundred and four weeks of
170 benefits by the employer or its insurer, have been completed prior to
171 July 1, 1999. All claims, pursuant to this section, not eligible for transfer
172 to the fund on or before July 1, 1999, will remain the responsibility of the
173 employer or its insurer.]

174 Sec. 6. Subsection (a) of section 31-354 of the general statutes is
175 repealed and the following is substituted in lieu thereof (*Effective October*
176 *1, 2021*):

177 (a) There shall be a fund to be known as the Second Injury Fund. Each
178 employer, other than the state, shall, within thirty days after notice
179 given by the State Treasurer, pay to the State Treasurer for the use of the
180 state a sum in payment of his liability under this chapter which shall be

181 calculated in accordance with the Second Injury Fund surcharge base,
182 as defined in section 31-349g, [and shall be assessed in accordance with
183 subsection (f) of section 31-349,] sections 31-349g, 31-349h and 31-349i,
184 this section, section 31-354b and sections 8 and 9 of public act 96-242.
185 Such sum shall be an amount sufficient to (1) pay the debt service on
186 state revenue bond obligations authorized to be issued under and for
187 the purposes set forth in section 31-354b including reserve and covenant
188 coverage requirements, (2) provide for costs and expenses of operating
189 the Second Injury Fund, and (3) pay Second Injury Fund stipulations on
190 claims settled by the custodian or other benefits payable out of the
191 Second Injury Fund and not funded through state revenue bond
192 obligations and shall be determined in accordance with the regulations
193 adopted pursuant to the provisions of section 31-349g. The custodian
194 shall establish a factor for the annual surcharge that caps such surcharge
195 for the fiscal years ending June 30, 1996, 1997 and 1998. In determining
196 such factor the custodian shall consider the funding mechanism
197 authorized by [subsection (f) of section 31-349,] sections 31-349g, 31-
198 349h and 31-349i, this section, section 31-354b and sections 8 and 9 of
199 public act 96-242, recognize that an acceptable level of employer
200 assessment is important to the vitality of the economy of the state and
201 nevertheless shall assure provision of services to injured workers that
202 enhances their ability to return to work and improve their quality of life.
203 In any event, such factor shall not exceed, with respect to insured
204 employers, a rate of fifteen per cent on the Second Injury Fund
205 surcharge base with respect to workers' compensation and employers'
206 liability policies and, with respect to self-insured employers, a
207 comparable percentage limitation representing their pro rata share of
208 any assessment. Any employer or any insurance company acting as
209 collection agent for the custodian of the Second Injury Fund who fails to
210 pay in accordance with such regulations shall pay a penalty to the State
211 Treasurer of fifteen per cent on the unpaid assessment or surcharge or
212 fifty dollars, whichever is greater. Interest at the rate of six per cent per
213 annum shall be charged on any amounts owed on assessment audits or
214 surcharge audits. For self-insured employers interest shall accrue thirty
215 days after notice from the Second Injury Fund of the unpaid audit

216 assessment. For insurance companies, the interest shall accrue from the
217 date of the notice of audit errors or deficiencies as determined by the
218 date postmarked by the United States Postal Service. The State Treasurer
219 shall notify each employer of the penalty or interest provision with the
220 notice of assessment. Any partial payments made to the fund shall be
221 first applied to any unpaid penalty, then to any unpaid interest and the
222 remainder, if any, to the unpaid assessment or surcharge. Interest or
223 penalties shall be applied if assessment or surcharge reports or
224 payments are postmarked by the United States Postal Service after the
225 designated due date. The sums received shall be accounted for
226 separately and apart from all other state moneys and the faith and credit
227 of the state of Connecticut is pledged for their safekeeping. The State
228 Treasurer shall be the custodian of the fund and all disbursements from
229 the fund shall be made by the Treasurer or the Treasurer's deputies. The
230 moneys of the fund shall be invested by the Treasurer in accordance
231 with applicable law and section 8 of public act 96-242. Interest, income
232 and dividends from the investments shall be credited to the fund. Each
233 employer, each private insurance carrier acting on behalf of any
234 employer and each interlocal risk management agency acting on behalf
235 of any employer shall annually, on or before April first, report to the
236 State Treasurer, in the form prescribed by the State Treasurer, the
237 amount of money expended by or on behalf of the employer in
238 payments for the preceding calendar year. Each private insurance
239 carrier, each self-insurance group and each interlocal risk management
240 agency shall submit annually, on or before April first, to the State
241 Treasurer, in the form prescribed by the State Treasurer, a report of the
242 total Second Injury Fund surcharge base collected in the preceding
243 calendar year and a report of the projected total Second Injury Fund
244 surcharge base for the current calendar year. The fund shall be used to
245 provide the benefits set forth in section 31-306 for adjustments in the
246 compensation rate and payment of certain death benefits, in section 31-
247 307b for adjustments where there are relapses after a return to work, in
248 section 31-307c for totally disabled persons injured prior to October 1,
249 1953, in section 31-349, as amended by this act, for disabled or
250 handicapped employees and in section 31-355 for the payment of

251 benefits due injured employees whose employers or insurance carriers
252 have failed to pay the compensation, and medical expenses required by
253 this chapter, or any other compensation payable from the fund as may
254 be required by any provision contained in this chapter or any other
255 statute and to reimburse employers or insurance carriers for payments
256 made under subsection (b) of section 31-307a. The assessment required
257 by this section is a condition of doing business in this state and failure
258 to pay the assessment, when due, shall result in the denial of the
259 privilege of doing business in this state or to self-insure under section
260 31-284. Any administrative or other costs or expenses incurred by the
261 State Treasurer in connection with carrying out the provisions of this
262 part, including the hiring of necessary employees, shall be paid from the
263 fund. The State Treasurer may adopt regulations, in accordance with the
264 provisions of chapter 54, prescribing the practices, policies and
265 procedures to be followed in the administration of the Second Injury
266 Fund.

267 Sec. 7. Subsection (a) of section 31-355a of the general statutes is
268 repealed and the following is substituted in lieu thereof (*Effective October*
269 *1, 2021*):

270 (a) Whenever the Second Injury Fund is required, pursuant to section
271 31-355, [or subsection (c) of section 31-349,] to pay benefits or
272 compensation mandated by the provisions of this chapter for any
273 employer or insurer who fails or is unable to make such payments, the
274 amount so paid by the fund shall be collectible by any means provided
275 by law for the collection of any tax due the state of Connecticut or any
276 subdivision thereof, including any means provided by section 12-35.
277 Tax warrants referred to in said section 12-35 may be signed by the State
278 Treasurer.

279 Sec. 8. Sections 31-276a, 31-298a and 31-304 of the general statutes are
280 repealed. (*Effective October 1, 2021*)

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2021</i>	New section
Sec. 2	<i>October 1, 2021</i>	31-280a(c)
Sec. 3	<i>October 1, 2021</i>	31-283f(a)
Sec. 4	<i>October 1, 2021</i>	31-298
Sec. 5	<i>October 1, 2021</i>	31-349
Sec. 6	<i>October 1, 2021</i>	31-354(a)
Sec. 7	<i>October 1, 2021</i>	31-355a(a)
Sec. 8	<i>October 1, 2021</i>	Repealer section

LAB *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill makes technical and conforming changes to the Workers' Compensation Act that have no fiscal impact to the Workers' Compensation Commission.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**SB 907*****AN ACT CONCERNING MINOR AND TECHNICAL CHANGES TO THE WORKERS' COMPENSATION ACT.*****SUMMARY**

This bill makes various minor and technical changes to the workers' compensation statutes. It:

1. retitles the workers' compensation commissioners as "administrative law judges" in current statutes and in any public acts from the 2021 legislative session (§ 1);
2. reduces the frequency with which the workers' compensation commission's advisory board must meet from twice to once each quarter (among other things, the board helps evaluate the performance of compensation commissioners and advises on the physicians available to examine injured workers (CGS § 31-280)) (§ 2);
3. eliminates a requirement for the commission's statistical division to be administered by a full-time, salaried director appointed by the Workers' Compensation Commission's chairperson (§ 3);
4. eliminates a requirement that the audio recordings of formal hearings provided to parties be on cassette (§ 4);
5. eliminates obsolete provisions regarding (a) the transfer of certain cases to the Second Injury Fund (which has not been allowed since 1995) (§§ 5-7); (b) a medical panel of occupational lung disease physicians (which has not met since the 1980s) (§ 8); and (c) the destruction of old workers' compensation agreements filed in Superior Court (which has been obsolete since the creation of the Compensation Review Division in 1980 and the

subsequent Compensation Review Board) (§ 8);

6. eliminates a provision that currently places the Workers' Compensation Commission within the Department of Labor for administrative purposes only (§ 8); and
7. makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2021

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 13 Nay 0 (03/18/2021)